

ST 02-0004-PLR 03/01/2002 MANUFACTURER'S PURCHASE CREDIT

Manufacturers and graphic arts producers do not earn Manufacturer's Purchase Credit (MPC) on purchases of manufacturing machinery and equipment or graphic arts machinery and equipment in transactions that are isolated or occasional sales by the seller. See 86 Ill. Adm. Code 130.331(a)(5). (This is a PLR).

March 1, 2002

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of January 24, 2002. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, COMPANY, FIRM is requesting a private letter ruling regarding Illinois treatment of sales/use tax law as it relates to the following facts. We have enclosed a copy of form IL-2848, Illinois Power of Attorney, authorizing us to correspond with you regarding this request.

**Facts:**

The Company is a manufacturer located in Illinois.

In 2000, the Company purchased manufacturing machinery and equipment which qualified for the manufacturing machinery and equipment exemption from Retailer's Occupation Tax provided by 35 ILCS 105/3-5(18).

The Company purchased said exempt machinery and equipment from an out-of-state manufacturer; therefore the sale was an occasional sale under Illinois' rules.

Illinois Manufacturer's Purchase Credit ('MPC') had not previously been earned on said exempt machinery and equipment.

Th Company has properly filed the original 2000 ST-16, Annual Report of Manufacturer's Purchase Credit Earned, and ST-17, Annual Report of Manufacturer's

Purchase Credit Used. The manufacturing machinery and equipment under discussion was not claimed on the 2000 ST-16.

**Issue:**

35 ILCS 105/3-85 regarding the Illinois MPC does not specifically disallow the earning of MPC on exempt manufacturing machinery and equipment that may also be deemed an occasional sale. In fact, occasional sales are not addressed by this statute. It is the Company's position that nothing in the statute would prevent it from earning MPC on the exempt manufacturing machinery and equipment purchased in the above described transaction. Do you concur?

**Discussions & Law:**

In attempting to determine if the above-described transaction would qualify for earning the Illinois MPC, we have looked to the Illinois Compiled Statutes rather than the Illinois Administrative Code. According to 35 ILCS 105/3-85, *'For purchases of machinery and equipment made on and after January 1, 1995, a purchaser of manufacturing machinery and equipment that qualifies for the exemption provided by paragraph (18) of Section 3-5 of this Act earns a credit in the amount equal to a fixed percentage of the tax which would have been incurred under this Act on those purchases.'* Paragraph (18) of Section 3-5 of the Use Tax Act, provides an exemption from use tax for *'Manufacturing and assembling machinery and equipment used primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sales or lease...'*

We could not locate anywhere in the Illinois Statutes where a purchaser is disallowed the earning of MPC on machinery and equipment that would be exempt as manufacturing machinery and equipment, but would also be exempt due to the occasional sale exemption. Understanding that the Administrative Code is merely an interpretation of the laws, we do not see how it follows the Illinois Statutes in this case. In the Administrative Code, the State has made the interpretation that manufacturing machinery and equipment that would be exempt under 86 Illinois Administrative Code 130.330 but also would be exempt under the occasional sale rule would not qualify for earning MPC.

Furthermore, the Illinois Administrative Code allows the MPC to be earned on equipment that qualifies under the expanded Enterprise Zone exemption if it would also qualify as manufacturing machinery and equipment as described in 86 Ill. Adm. Code 130.330. Here the MPC is allowed to be earned on doubly exempt equipment. Following this same pattern, it seems that the same would apply when the machinery or equipment qualified for exemption under both the manufacturing machinery and equipment exemption and the occasional sale exemption.

We could not locate contradictory cases or previous letter rulings addressing a similar set of facts as established in this request. To the best of our knowledge, the Illinois Department of Revenue has not previously ruled on the same or similar issue for Company. Neither the company nor our firm has previously requested a letter ruling regarding this issue. There is currently no audit or pending litigation with the Illinois Department of Revenue.

Based on the above research, it does appear that Company's assertion that it could earn MPC on the above-described transaction is correct.

Thank you in advance for your assistance in this matter. If you have any questions regarding any of the information provided, please contact me.

## **DEPARTMENT'S RESPONSE:**

We do not agree with your contention that a manufacturer or graphic arts producer may earn Manufacturer's Purchase Credit (MPC) on purchases of manufacturing machinery and equipment or graphic arts machinery and equipment in transactions that are isolated or occasional sales by the seller.

You are correct that Section 3-85 of the Use Tax Act does not specifically address isolated or occasional sales. See, 35 ILCS 105/3-85. However, we believe that the Illinois Legislature clearly did not intend for manufacturers and graphic arts producers to earn MPC in isolated or occasional sale transactions.

Isolated or occasional sales of tangible personal property by persons who do not hold themselves out as being engaged (or do not habitually engage) in selling such tangible personal property at retail does not constitute engaging in a business of selling tangible personal property at retail. See 35 ILCS 105/2. Purchasers of such property do not incur Use Tax liability on those purchases because those sales are not subject to taxation under the Use Tax Act regardless of the type of property being purchased.

Even if purchases of manufacturing machinery and equipment or graphic arts machinery and equipment made through isolated or occasional sales transactions would be considered to earn MPC, the amount of MPC earned on such purchases would be zero. Section 3-85 states that, "[t]he amount of credit shall be a percentage of the tax that would have been incurred on the purchase of manufacturing machinery and equipment and graphic arts machinery and equipment if the exemptions provided by paragraph (6) or paragraph (18) of Section 3-5 of this Act had not been applicable." 35 ILCS 105/3-85 (2000 State Bar Edition).

Applying this formula to a purchase of manufacturing machinery and equipment or graphic arts machinery and equipment made through an isolated or occasional sale transaction results in no tax that would have been incurred if the manufacturing machinery and equipment exemption or the graphic arts machinery and equipment exemption had not been applicable. Therefore, there is no percentage of tax avoided upon which to earn MPC.

You have referenced the Department's rulemaking regarding the earning of MPC on purchases that also qualify under the expanded enterprise zone exemption. See 86 Ill. Adm. Code 130.331(a)(4). This provision was added to the MPC rules at the express request of manufacturers. The expanded enterprise zone exemption applies to all tangible personal property used or consumed in manufacturing or graphic arts production. See, 35 ILCS 120/1d. The expanded enterprise zone exemption includes tangible personal property that would not otherwise qualify for the manufacturing machinery and equipment and graphic arts machinery and equipment exemptions. See 35 ILCS 120/2-5(4) and 120/2-5(14). Shortly after the statutory provisions creating MPC were enacted, manufacturers contacted the Department and expressed concern that in order to earn MPC, they would be required to claim the manufacturing machinery and equipment exemption on a purchase of tangible personal property, even if that property also qualified for the expanded enterprise zone

exemption. This was especially an issue for manufacturers if the Department determined later that the property did not qualify for the manufacturing machinery and equipment exemption. The manufacturers were concerned that the Department would deny the manufacturing machinery and equipment exemption and be able to assess tax on the purchase even though that tangible personal property was eventually used in an enterprise zone and could have qualified under the expanded enterprise zone exemption.

Because of these concerns, the manufacturers asked the Department to allow them to continue to earn MPC when purchasing machinery or equipment that qualifies for the manufacturing machinery and equipment exemption even though they claimed the expanded enterprise zone exemption on those purchases. The Department agreed and subsection (a)(4) of Section 130.331 was added to the MPC rules.

Unlike isolated or occasional sales which are not subject to tax under the Retailers' Occupation Tax Act or the Use Tax Act regardless of the type of property that is being purchased, the expanded enterprise zone exemption applies only to tangible personal property used or consumed in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.1951(b). We believe that the Illinois Legislature intended for manufacturers and graphic arts producers to earn MPC on retail purchases of manufacturing machinery and equipment and graphic arts machinery and equipment. We do not believe that the Illinois Legislature intended to limit the earning of MPC based merely on the location in Illinois where the machinery and equipment is to be used, such as in an enterprise zone. In any event, the Department's MPC rulemaking in regards to the expanded enterprise zone exemption has no bearing on whether a manufacturer or graphic arts producer can earn MPC in isolated or occasional sale situations.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have questions regarding this Private Letter Ruling you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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TDC:msk  
Enc.